

Senate Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 2

SENATE BILL 1046

AN ACT

AMENDING SECTION 43-1147, ARIZONA REVISED STATUTES; RELATING TO ALLOCATION OF
BUSINESS INCOME FOR TAX PURPOSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-1147, Arizona Revised Statutes, is amended to
3 read:

4 43-1147. Situs of sales of other than tangible personal
5 property; definitions

6 A. EXCEPT AS PROVIDED BY SUBSECTION B OF THIS SECTION, sales, other
7 than sales of tangible personal property, are in this state if any EITHER of
8 the following apply:

9 1. The income producing activity is performed in this state.

10 2. The income producing activity is performed both in and outside this
11 state and a greater proportion of the income producing activity is performed
12 in this state than in any other state, based on costs of performance.

13 B. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2013, A
14 MULTISTATE SERVICE PROVIDER MAY ELECT TO TREAT SALES FROM SERVICES AS BEING
15 IN THIS STATE BASED ON A COMBINATION OF INCOME PRODUCING ACTIVITY SALES AND
16 MARKET SALES. IF THE ELECTION UNDER THIS SUBSECTION IS MADE PURSUANT TO
17 SUBSECTION C OF THIS SECTION, THE SALES OF SERVICES THAT ARE IN THIS STATE
18 SHALL BE DETERMINED FOR TAXABLE YEARS BEGINNING FROM AND AFTER:

19 1. DECEMBER 31, 2013 THROUGH DECEMBER 31, 2014 BY THE SUM OF THE
20 FOLLOWING:

21 (a) EIGHTY-FIVE PER CENT OF THE MARKET SALES.

22 (b) FIFTEEN PER CENT OF THE INCOME PRODUCING ACTIVITY SALES.

23 2. DECEMBER 31, 2014 THROUGH DECEMBER 31, 2015 BY THE SUM OF THE
24 FOLLOWING:

25 (a) NINETY PER CENT OF THE MARKET SALES.

26 (b) TEN PER CENT OF THE INCOME PRODUCING ACTIVITY SALES.

27 3. DECEMBER 31, 2015 THROUGH DECEMBER 31, 2016 BY THE SUM OF THE
28 FOLLOWING:

29 (a) NINETY-FIVE PER CENT OF THE MARKET SALES.

30 (b) FIVE PER CENT OF THE INCOME PRODUCING ACTIVITY SALES.

31 4. DECEMBER 31, 2016 BY ONE HUNDRED PER CENT OF THE MARKET SALES.

32 C. A MULTISTATE SERVICE PROVIDER MAY ELECT TO TREAT SALES FROM
33 SERVICES AS BEING IN THIS STATE UNDER SUBSECTION B OF THIS SECTION AS
34 FOLLOWS:

35 1. THE ELECTION MUST BE MADE ON THE TAXPAYER'S TIMELY FILED ORIGINAL
36 INCOME TAX RETURN. THE ELECTION IS:

37 (a) EFFECTIVE RETROACTIVELY FOR THE FULL TAXABLE YEAR OF THE INCOME
38 TAX RETURN ON WHICH THE ELECTION IS MADE.

39 (b) BINDING ON THE TAXPAYER FOR AT LEAST FIVE CONSECUTIVE TAXABLE
40 YEARS, REGARDLESS OF WHETHER THE TAXPAYER NO LONGER MEETS THE PERCENTAGE
41 THRESHOLD OF A MULTISTATE SERVICE PROVIDER DURING THAT TIME PERIOD, EXCEPT AS
42 PROVIDED BY PARAGRAPH 2 OF THIS SUBSECTION. TO CONTINUE WITH THE ELECTION
43 AFTER THE FIVE CONSECUTIVE TAXABLE YEARS, THE TAXPAYER MUST MEET THE
44 QUALIFICATIONS TO BE CONSIDERED A MULTISTATE SERVICE PROVIDER AND RENEW THE
45 ELECTION FOR ANOTHER FIVE CONSECUTIVE TAXABLE YEARS.

1 2. DURING THE ELECTION PERIOD, THE ELECTION MAY BE TERMINATED AS
2 FOLLOWS:

3 (a) WITHOUT THE PERMISSION OF THE DEPARTMENT ON THE ACQUISITION OR
4 MERGER OF THE TAXPAYER.

5 (b) WITH THE PERMISSION OF THE DEPARTMENT BEFORE THE EXPIRATION OF
6 FIVE CONSECUTIVE TAXABLE YEARS.

7 D. FOR THE PURPOSES OF THIS SECTION:

8 1. "INCOME PRODUCING ACTIVITY SALES" MEANS THE TOTAL SALES FROM
9 SERVICES THAT ARE SALES IN THIS STATE UNDER SUBSECTION A OF THIS SECTION.

10 2. "MARKET SALES" MEANS THE TOTAL SALES FROM SERVICES FOR WHICH THE
11 PURCHASER RECEIVED THE BENEFIT OF THE SERVICE IN THIS STATE.

12 3. "MULTISTATE SERVICE PROVIDER" MEANS A TAXPAYER THAT DERIVES MORE
13 THAN EIGHTY-FIVE PER CENT OF ITS SALES FROM SERVICES PROVIDED TO PURCHASERS
14 WHO RECEIVE THE BENEFIT OF THE SERVICE OUTSIDE THIS STATE IN THE TAXABLE YEAR
15 OF ELECTION, AND INCLUDES ALL TAXPAYERS REQUIRED TO FILE A COMBINED REPORT
16 PURSUANT TO SECTION 43-942 AND ALL MEMBERS OF AN AFFILIATED GROUP INCLUDED IN
17 A CONSOLIDATED RETURN PURSUANT TO SECTION 43-947. IN CALCULATING THE
18 EIGHTY-FIVE PER CENT, SALES TO STUDENTS RECEIVING EDUCATIONAL SERVICES AT
19 CAMPUSES PHYSICALLY LOCATED IN THIS STATE SHALL BE EXCLUDED FROM THE
20 CALCULATION.

21 4. "RECEIVED THE BENEFIT OF THE SERVICE IN THIS STATE" MEANS THE
22 SERVICES ARE RECEIVED BY THE PURCHASER IN THIS STATE. IF THE STATE WHERE THE
23 SERVICES ARE RECEIVED CANNOT BE READILY DETERMINED, THE SERVICES ARE
24 CONSIDERED TO BE RECEIVED AT THE HOME OF THE CUSTOMER OR, IN THE CASE OF A
25 BUSINESS, THE OFFICE OF THE CUSTOMER FROM WHICH THE SERVICES WERE ORDERED IN
26 THE REGULAR COURSE OF THE CUSTOMER'S TRADE OR BUSINESS. IF THE ORDERING
27 LOCATION CANNOT BE DETERMINED, THE SERVICES ARE CONSIDERED TO BE RECEIVED AT
28 THE HOME OR OFFICE OF THE CUSTOMER TO WHICH THE SERVICES WERE BILLED.

29 Sec. 2. Effect on prior law

30 The provisions of this act are not intended to affect, and shall not be
31 cited or considered in, the construction or interpretation of section
32 43-1147, Arizona Revised Statutes, for taxable periods before the effective
33 date of this act.

34 Sec. 3. Effective date

35 This act is effective and applies to taxable years beginning from and
36 after December 31, 2013.

APPROVED BY THE GOVERNOR FEBRUARY 21, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE FEBRUARY 21, 2012.

Passed the House February 16, 2012

by the following vote: 54 Ayes,

1 Nays, 3 Not Voting
Excused 1 vacant

Cheryl Laube
Speaker of the House
Pro Tempore
Chief Clerk of the House

Passed the Senate January 19, 2012

by the following vote: 28 Ayes,

0 Nays, 1 Not Voting
1 vacant

Charrin Bellington
President of the Senate
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

21 day of February, 2012,

at 8:50 o'clock A M.

Julia Smith
Secretary to the Governor

Approved this 21st day of

February, 2012,

at 11:05 o'clock A M.

Janice K. Brewer
Governor of Arizona

S.B. 1046

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 21st day of February, 2012,

at 11:55 o'clock A M.
Kim Blum
Secretary of State